

**Executive Summary – Enforcement Matter – Case No. 43554**  
**Mohammad Y. Hossain dba West Davis Food Mart**  
**RN102154267**  
**Docket No. 2012-0365-PST-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

West Davis Food Mart, 619 West Davis Street, Dallas, Dallas County

**Type of Operation:**

Convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** August 31, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$14,890

**Amount Deferred for Expedited Settlement:** \$2,978

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$362

**Total Due to General Revenue:** \$11,550

Payment Plan: 35 payments of \$330 each

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 43554**  
**Mohammad Y. Hossaeen dba West Davis Food Mart**  
**RN102154267**  
**Docket No. 2012-0365-PST-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** April 26, 2012

**Date(s) of NOE(s):** January 25, 2012

***Violation Information***

1. Failed to report a suspected release to the TCEQ within 24 hours of the discovery. Specifically, inventory control records for the month of November 2010 indicated a suspected release for the super unleaded underground storage tank ("UST") that was not reported [30 TEX. ADMIN. CODE § 334.72].
2. Failed to investigate a suspected release of regulated substances within 30 days of discovery. Specifically, inventory control records for the month of November 2010 indicated a suspected release for the super unleaded UST that was not investigated [30 TEX. ADMIN. CODE § 334.74].
3. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

Respondent submitted a release determination report on May 16, 2012 which documented that no release of regulated substances from the USTs had occurred.

**Technical Requirements:**

The Order will require the Respondent to:

- a. Immediately, begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel;
- b. Within 30 days, establish and implement a process for reporting a suspected release; and
- c. Within 45 days, submit written certification demonstrating compliance.

**Executive Summary – Enforcement Matter – Case No. 43554**  
**Mohammad Y. Hossaen dba West Davis Food Mart**  
**RN102154267**  
**Docket No. 2012-0365-PST-E**

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Thomas Greimel, Enforcement Division,  
Enforcement Team 7, MC 128, (512) 239-5690; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412.  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** Mohammad Y. Hossaen, Owen, West Davis Food Mart, 619 West Davis  
Street, Dallas, Texas 75208  
**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES

Assigned

30-Jan-2012

PCW

30-May-2012

Screening

9-Feb-2012

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent Mohammad Y. Hossain dba West Davis Food Mart

Reg. Ent. Ref. No. RN102154267

Facility/Site Region 4-Dallas/Fort Worth

Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No. 43554

Docket No. 2012-0365-PST-E

Media Program(s) Petroleum Storage Tank

Multi-Media

No. of Violations 3

Order Type 1660

Government/Non-Profit No

Enf. Coordinator Thomas Greimel

EC's Team Enforcement Team 7

Admin. Penalty \$ Limit Minimum

\$0

Maximum

\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)**

**Subtotal 1** \$14,500

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History**

2.0%

Enhancement

**Subtotals 2, 3, & 7**

\$290

Notes

Enhancement for one NOV with a dissimilar violation.

**Culpability**

No

0.0%

Enhancement

**Subtotal 4**

\$0

Notes

The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments**

**Subtotal 5**

\$0

**Economic Benefit**

Total EB Amounts \$241

Approx. Cost of Compliance \$2,100

0.0% Enhancement\*

\*Capped at the Total EB \$ Amount

**Subtotal 6**

\$0

**SUM OF SUBTOTALS 1-7**

**Final Subtotal**

\$14,790

**OTHER FACTORS AS JUSTICE MAY REQUIRE**

0.0%

**Adjustment**

\$100

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Enhancement to capture the avoided cost of compliance associated with violation no. 1.

**Final Penalty Amount**

\$14,890

**STATUTORY LIMIT ADJUSTMENT**

**Final Assessed Penalty**

\$14,890

**DEFERRAL**

20.0%

Reduction

**Adjustment**

-\$2,978

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

**PAYABLE PENALTY**

\$11,912

Screening Date 9-Feb-2012

Docket No. 2012-0365-PST-E

PCW

Respondent Mohammad Y. Hossaen dba West Davis Food Mart

Policy Revision 2 (September 2002)

Case ID No. 43554

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102154267

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with a dissimilar violation.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 2%

Screening Date 9-Feb-2012

Docket No. 2012-0365-PST-E

PCW

Respondent Mohammad Y. Hossain dba West Davis Food Mart

Policy Revision 2 (September 2002)

Case ID No. 43554

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102154267

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 334.72

Violation Description

Failed to report a suspected release to the TCEQ within 24 hours of the discovery. Specifically, inventory control records for the month of November 2010 indicated a suspected release for the super unleaded underground storage tank ("UST") that was not reported.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$100

Violation Final Penalty Total \$1,020

This violation Final Assessed Penalty (adjusted for limits) \$1,020

# Economic Benefit Worksheet

**Respondent** Mohammad Y. Hossain dba West Davis Food Mart

**Case ID No.** 43554

**Req. Ent. Reference No.** RN102154267

**Media** Petroleum Storage Tank

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	1-Dec-2010	2-Dec-2010	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to report a suspected release. Date Required is the date of the suspected release.  
Final Date is the date the report was due.

Approx. Cost of Compliance

\$100

**TOTAL**

\$100



Screening Date 9-Feb-2012

Docket No. 2012-0365-PST-E

PCW

Respondent Mohammad Y. Hossaeen dba West Davis Food Mart

Policy Revision 2 (September 2002)

Case ID No. 43554

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102154267

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.74

## Violation Description

Failed to investigate a suspected release of regulated substances within 30 days of discovery. Specifically, inventory control records for the month of November 2010 indicated a suspected release for the super unleaded UST that was not investigated.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 5

405 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$12,500

Five quarterly events are recommended from the release investigation due date of December 31, 2010 to the February 9, 2012 screening date.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent came into compliance on May 16, 2012, after the settlement offer dated March 22, 2012.

Violation Subtotal \$12,500

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$103

Violation Final Penalty Total \$12,750

This violation Final Assessed Penalty (adjusted for limits) \$12,750

# Economic Benefit Worksheet

**Respondent** Mohammad Y. Hossain dba West Davis Food Mart

**Case ID No.** 43554

**Req. Ent. Reference No.** RN102154267

**Media** Petroleum Storage Tank

**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	31-Dec-2010	16-May-2012	1.38	\$103	n/a	\$103

**Notes for DELAYED costs**

Estimated cost to investigate a suspected release. Date Required is the date the release investigation was due. Final Date is the date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$1,500

**TOTAL**

\$103

Screening Date 9-Feb-2012

Docket No. 2012-0365-PST-E

PCW

Respondent Mohammad Y. Hossain dba West Davis Food Mart

Policy Revision 2 (September 2002)

Case ID No. 43554

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102154267

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

Violation Description Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification			
	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

15 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$38

Violation Final Penalty Total \$1,020

This violation Final Assessed Penalty (adjusted for limits) \$1,020

# Economic Benefit Worksheet

**Respondent** Mohammad Y. Hossain dba West Davis Food Mart  
**Case ID No.** 43554  
**Req. Ent. Reference No.** RN102154267  
**Media** Petroleum Storage Tank  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	26-Apr-2011	30-Oct-2012	1.52	\$38	n/a	\$38
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain UST records. Date Required is the investigation date. Final Date is the estimated date of compliance.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$38

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603679135 Hossaen, Mohammad Y. Classification: AVERAGE Rating: 0.60

Regulated Entity: RN102154267 West Davis Food Mart Classification: AVERAGE Site Rating: 0.60

ID Number(s): PETROLEUM STORAGE TANK STAGE II REGISTRATION 19076  
 PETROLEUM STORAGE TANK REGISTRATION 19076  
 REGISTRATION

Location: 619 W DAVIS ST, DALLAS, TX, 75208

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: February 08, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 08, 2007 to February 08, 2012

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Thomas Greimel Phone: (512) 239-5690

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If YES, who is the current owner/operator? Sudduha, Sham, Owner, 4/1/2010 to 12/31/3000  
Hossaen, Mohammad Y., Operator, 4/1/2010 to 12/31/3000
4. If YES, who was/were the prior owner(s)/operator(s)? ASA Management, Inc., Owner Operator
5. If YES, when did the change(s) in owner or operator occur? 4/1/2010
6. Rating Date: 9/1/2011 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 

1	07/09/2009	(748790)
2	06/07/2010	(802316)
3	11/23/2010	(878852)
4	01/25/2012	(919506)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	06/07/2010 (802316)	CN603679135
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.49(c)(4)	
Description:	Failure to perform an operability test on a cathodic protection system within 3 to 6 months after installation and at a subsequent frequency of at least once every 3 years.	
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MOHAMMOD Y. HOSSAEN DBA  
WEST DAVIS FOOD MART  
RN102154267**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2012-0365-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Mohammod Y. Hossaeen dba West Davis Food Mart ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent operates a convenience store with retail sales of gasoline at 619 West Davis Street in Dallas, Dallas County, Texas (the "Facility").
2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 30, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Fourteen Thousand Eight Hundred Ninety Dollars (\$14,890) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Hundred Sixty-Two Dollars

(\$362) of the administrative penalty and Two Thousand Nine Hundred Seventy-Eight Dollars (\$2,978) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the penalty payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Eleven Thousand Five Hundred Fifty Dollars (\$11,550) of the administrative penalty shall be payable in 35 monthly payments of Three Hundred Thirty Dollars (\$330) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent submitted a release determination report on May 16, 2012 which documented that no release of regulated substances from the USTs had occurred.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.



## II. ALLEGATIONS

As operator of the Facility, the Respondent is alleged to have:

1. Failed to report a suspected release to the TCEQ within 24 hours of the discovery, in violation of 30 TEX. ADMIN. CODE § 334.72, as documented during an investigation conducted on April 26, 2011. Specifically, inventory control records for the month of November 2010 indicated a suspected release for the super unleaded UST that was not reported.
2. Failed to investigate a suspected release of regulated substances within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74, as documented during an investigation conducted on April 26, 2011. Specifically, inventory control records for the month of November 2010 indicated a suspected release for the super unleaded UST that was not investigated.
3. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b), as documented during an investigation conducted on April 26, 2011.

## III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Mohammad Y. Hossaeen dba West Davis Food Mart, Docket No. 2012-0365-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel, in accordance with 30 TEX. ADMIN. CODE § 334.10;

- b. Within 30 days after the effective date of this Agreed Order, establish and implement a process for reporting a suspected release, in accordance with 30 TEX. ADMIN. CODE § 334.72; and
- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
- 5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the

Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

Ram Dawan J.  
For the Executive Director

9/21/12  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

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Signature

06/11/2012  
Date

MOHAMMAD HOSSAEN  
Name (Printed or typed)  
Authorized Representative of  
Mohammad Y. Hossaeen dba West Davis Food Mart

Owner.  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.